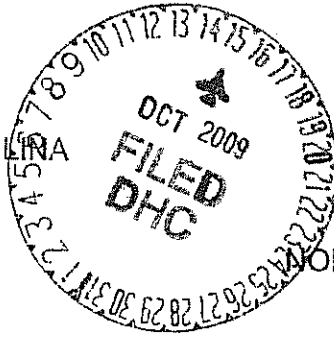


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING
COMMISSION
NORTH CAROLINA STATE BAR
08 DHC 12

THE NORTH CAROLINA STATE BAR,

Plaintiff,

vs.

THOMAS L. NESBIT,

Defendant.

ANSWER

NOW COMES the defendant, answering the Complaint of the plaintiff, alleges and says:

1. The allegations contained in paragraph 1 of plaintiff's Complaint are admitted.
2. The allegations contained in paragraph 2 of plaintiff's Complaint are admitted.
3. The allegations contained in paragraph 3 of plaintiff's Complaint are admitted.

FIRST CLAIM FOR RELIEF

4. Defendant incorporates paragraphs 1 through 3 of his Answer as if fully set out herein in response to the allegations in paragraph 4.
5. The allegations contained in paragraph 5 of plaintiff's Complaint are admitted.
6. The allegations contained in paragraph 6 of plaintiff's Complaint are admitted.
7. It is admitted that the property was encumbered by a deed of trust securing a loan from Suntrust Bank's predecessor in interest CCB.
8. The allegations contained in paragraph 8 of plaintiff's Complaint are admitted.

9. It is admitted that on or about November 4, 2005, defendant executed a deed to Michael J. Parker and wife, Julie A. Parker as President of Fourth Street Property Management, Inc. and that Mr. Parker took the deed to his office to complete the closing, including the payment of all outstanding liens and encumbrances on the property at some later date. The defendant is without sufficient information with which to form a belief as to the truth as to the remaining allegations of paragraph 9 and said allegations are therefore denied.
10. It is admitted that a check in the amount of \$115,971.03 made payable to Fourth Street was prepared which represented the sales price less the seller's closing costs. It is admitted that said check was prepared on behalf of the Parkers. Defendant is without sufficient information with which to form a belief as to the truth of the remaining allegations contained in paragraph 10 and therefore are denied.
11. The allegations contained in paragraph 11 of plaintiff's Complaint are denied.
12. The allegations contained in paragraph 12 of plaintiff's Complaint are denied.
13. The allegations contained in paragraph 13 of plaintiff's Complaint are denied.
14. It is admitted that the closing agent nor defendant delivered any funds to Suntrust bank prior to recording the deed outlined in paragraph 9; however, defendant specifically alleges in response to the allegations contained in paragraph 14 that he did not know that the property closed on November 10, 2005, as he was at the hospital on said date with his father, who died on November 11, 2005.
15. Defendant admits that as a result of the failure of the Parker's closing agent to pay funds to Suntrust Bank prior to or simultaneous with the recording of the deed outlined in paragraph 9, that Fourth Street did not convey the property to the Parker's free and clear of all liens and encumbrances. However, defendant denies that he knew said lien had not been paid on November 10, 2005 and he further alleges that it was his understanding that the Parker's closing agent was to pay off all liens and encumbrances prior to recording said deed.
16. The allegations contained in paragraph 16 of plaintiff's Complaint are denied.

SECOND CLAIM FOR RELIEF

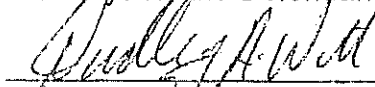
17. Defendant incorporates paragraphs 1 through 16 of his Answer as if fully set out herein in response to the allegations in paragraph 17.
18. It is admitted that on January 28, 2008, defendant was indicted by a Grand Jury in Davie County for one count of Obtaining Property by False Pretenses, a felony. A copy of the indictment is attached hereto and incorporated herein by reference, as Exhibit "A", the terms of which speak for itself. Any remaining allegations contained in paragraph 18 inconsistent with Exhibit "A" are denied.
19. It is admitted that on April 7, 2008, defendant entered an Alford plea in Davie County criminal file number 08 CRS 177 to the crime of Obtaining Money by False Pretense. However, it is denied that an Alford plea is an admission of guilt as more specifically outlined in paragraph 13(c) of said Transcript of Plea, which is attached hereto and incorporated herein by reference as Exhibit "B". Rather, defendant asserts that he entered said plea, as he considered it to be in his best interests to plead guilty to the charges. Any remaining allegations contained in paragraph 19 are denied.

WHEREFORE, having answered the like numbered paragraphs of the Complaint, the defendant hereby denies any remaining allegations in plaintiff's complaint which allege or contend that he knowingly and willfully violated Rules 8.4(b) and/or 8.4(c), or that the entry of his Alford plea requires disbarment or other disciplinary action pursuant to said rules or N.C. Gen. Stat. § 84-28(b). Defendant therefore requests that the Disciplinary Hearing Commission enter Orders after hearing evidence in this matter consistent with a finding that the defendant did not knowingly and intentionally commit a criminal act or a violation of the Rules as alleged in plaintiff's Complaint.

This the 14th day of October, 2009.

CRUMPLER FREEDMAN PARKER & WITT

Attorneys for the Defendant



Dudley A. Witt

State Bar #: 11155

301 N. Main Street, Suite 700

Winston-Salem, NC 27101

Tel. No.: 336-725-1304

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING
COMMISSION
NORTH CAROLINA STATE BAR
08 DHC 12

THE NORTH CAROLINA STATE BAR,

Plaintiff,

vs.

THOMAS L. NESBIT,

Defendant.

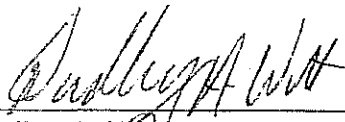
CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an attorney at law licensed to practice in the State of North Carolina, is attorney for the defendant and is a person of such age and discretion as to be competent to serve process.

That on the 14th day of October, 2009, he served a copy of the attached **ANSWER** by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and its contents in the United States Mail at Winston-Salem, North Carolina.

ADDRESSEE: Ms. Margaret Cloutier
The North Carolina State Bar
PO Box 25908
Raleigh, NC 27611

CRUMPLER FREEDMAN PARKER & WITT
Attorneys for the Defendant



Dudley A. Witt
State Bar #: 11155
301 North Main Street, Suite 700
Winston-Salem, NC 27101
Tel. No.: (336) 725-1304

EXHIBIT "A"

COPY

STATE OF NORTH CAROLINA
COUNTY OF DAVIE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.

08CR0177

STATE OF NORTH CAROLINA

VS.

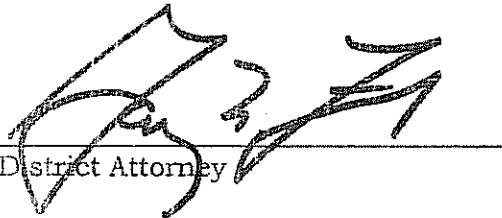
INDICTMENT

THOMAS LYNN NESEIT,
Defendant

OFFENSE: OBTAINING PROPERTY BY FALSE PRETENSES

OFFENSE IN VIOLATION OF: G.S. 14-100

THE JURORS FOR THE STATE upon their oath present that on or about the 10th day of November, 2005, and in the county named above, the defendant named above unlawfully, willfully and feloniously did knowingly and designedly with the intent to cheat and defraud, obtain money from Michael J. Parker and Julie A. Parker by means of a false pretense which was calculated to deceive and did deceive. The false pretense consisted of the following: The defendant as President of Fourth Street Management, Inc., did sell certain real estate by Warranty Deed to Michael J. Parker and Julie A. Parker representing the real estate was free and clear of encumbrances when in fact the real estate was encumbered by a first mortgage. The value of the money described above was \$100,000 or more, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State.


District Attorney

WITNESSES:

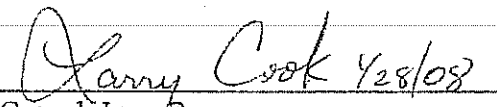
X

Captain K. Hunter - MPD

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and after hearing testimony, this bill was found to be:

Yes A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

____ NOT A TRUE BILL.


Grand Jury Foreman

DATE: January 28, 2008

EXHIBIT "B"

STATE OF NORTH CAROLINA

File No.

08025 177

DAVIE

County

In The General Court Of Justice

☐ District ☒ Superior Court Division

STATE VERSUS

Name Of Defendant

THOMAS LYNN NESBIT

DOB

3/16/59

Age

49

Highest Level Of Education Completed

J.D. - UNC

TRANSCRIPT OF PLEA

G.S. 15A-1022, 15A-1022.1

The undersigned judge, having addressed the defendant personally in open court, finds that the defendant (1) was duly sworn or affirmed, (2) entered a plea of ☒ guilty ☐ no contest, and (3) offered the following answers to the questions set out below:

Answers

1. Are you able to hear and understand me? (1) Yes
2. Do you understand that you have the right to remain silent and that any statement you make may be used against you? (2) Yes
3. At what grade level can you read and write? (3) La School
4. (a) Are you now under the influence of alcohol, drugs, narcotics, medicines, pills, or any other intoxicants? (4a) No
- (b) When was the last time you used or consumed any such substance? (4b) Per-Law Night
5. Have the charges been explained to you by your lawyer, and do you understand the nature of the charges, and do you understand every element of each charge? (5) Yes
6. (a) Have you and your lawyer discussed the possible defenses, if any, to the charges? (6a) Yes
- (b) Are you satisfied with your lawyer's legal services? (6b) Yes
7. (a) Do you understand that you have the right to plead not guilty and be tried by a jury? (7a) Yes
- (b) Do you understand that at such trial you have the right to confront and to cross examine witnesses against you? (7b) Yes
- (c) Do you understand that at a jury trial you have the right to have a jury determine the existence of any aggravating factors that may apply to your case (and additional sentencing points not related to prior convictions) beyond a reasonable doubt? (7c) Yes
- (d) Do you understand that by your plea(s) you give up these and other valuable constitutional rights to a jury trial, including rights related to sentencing? (7d) Yes
8. Do you understand that, if you are not a citizen of the United States of America, your plea(s) of guilty or no contest may result in your deportation from this country, your exclusion from admission to this country, or the denial of your naturalization under federal law? (8) N/A
9. (if applicable) Do you understand that upon conviction of a felony you may forfeit any State licensing privileges you have in the event that you refuse probation, or that your probation is revoked, and have you discussed this issue with your lawyer? (9) Yes
10. (Victims Rights Act cases only) Do you understand that upon your conviction of _____ you may be ordered to pay restitution to any persons directly and proximately injured as a result of your commission of that offense, and that a civil judgment in favor of each such person may be docketed against you and will be a lien for the next ten (10) years against any real estate you own? (10) N/A
11. Do you understand that you are pleading ☒ guilty ☐ no contest to the charges shown on Page Two of the transcript? (Describe charges, total maximum punishments, and applicable mandatory minimums for those charges.) (11) Yes
12. Do you now personally plead ☐ guilty ☐ no contest to the charges I just described? (12) Yes
13. (a) (if applicable) Are you in fact guilty? (13a) N/A
- (b) (if applicable - no contest plea) Do you understand that, upon your plea of no contest, you will be treated as being guilty whether or not you admit that you are in fact guilty? (13b) N/A
- (c) (if applicable - Afford plea) (1) Do you now consider it to be in your best interest to plead guilty to the charge(s) I just described? (13c1) Yes
- (2) Do you understand that, upon your "Afford plea," you will be treated as being guilty whether or not you admit that you are in fact guilty? (13c2) Yes
14. Do you understand that the courts have approved plea arrangements and that, if you have a plea arrangement with the State, I will not disapprove of you because of it? (14) Yes
15. Have you agreed to plead ☒ guilty ☐ no contest as part of a plea arrangement? (If so, review terms of plea arrangement as listed on Page Two, number 15, with the defendant.) (15) Yes

16. (If applicable) Do you understand that you also are admitting the existence of the following aggravating factors and/or sentencing points not related to prior convictions, and agreeing that there is evidence to support the following factors and/or points beyond a reasonable doubt, and agreeing that the court may accept your admission to these factors and/or points?

Answers

(16) N/A

17. (If applicable) Do you ☐ understand that you are waiving any notice requirement that the State may have with regard to these aggravating factors and/or sentencing points? ☐ agree that the State has provided you with appropriate notice about the aggravating factors and/or sentencing points in your case?

(17) N/A

18. Do you understand that you also have the right during a sentencing hearing to prove to the judge the existence of any mitigating factors that may apply to your case?

(18) YES

19. Is the plea arrangement as set forth within this transcript and as I have just described it to you correct as being your full plea arrangement?

(19) YES

20. (Other than the plea arrangement between you and the prosecutor) has anyone promised you anything or threatened you in any way to cause you to enter this plea against your wishes?

(20) NO

21. Do you enter this plea of your own free will, fully understanding what you are doing?

(21) YES

22. Do you agree that there are facts to support your plea (and admission to aggravating factors and/or sentencing points), and consent to the prosecutor summarizing the evidence related to this factual basis?

(22) YES

23. Do you have any questions about what has just been said to you or about anything else connected to your case?

(23) NO

ACKNOWLEDGEMENT BY DEFENDANT

I have read or have heard all of these questions and understand them. The answers shown are the ones I gave in open court and they are true and accurate. No one has told me to give false answers in order to have the Court accept my plea in this case. The terms and conditions of the plea as stated within this transcript, if any, are accurate.

SWORN AND SUBSCRIBED TO BEFORE ME

Date

4/7/08

Date

4/7/08

Signature

[Signature]

Signature Of Defendant

[Signature]

☐ Deputy CSC

☐ Assistant CSC

☐ Clerk Of Superior Court

Name Of Defendant (Type Or Print)

Thomas Lynn Nob. H

CERTIFICATION BY LAWYER FOR DEFENDANT

I hereby certify that the terms and conditions stated within this transcript, if any, upon which the defendant's plea was entered are correct and they are agreed to by the defendant and myself. I further certify that I have fully explained to the defendant the nature and elements of the charge(s) to which the defendant is pleading, and the aggravating and mitigating factors and prior record points for sentencing, if any.

Date

4/7/08

Name Of Lawyer For Defendant (Type Or Print)

Paul E. Brown

Signature Of Lawyer For Defendant

[Signature]

CERTIFICATION BY PROSECUTOR

As prosecutor for this Prosecutorial District, I hereby certify that the conditions stated within this transcript, if any, are the terms and conditions agreed to by the defendant and his/her lawyer and myself for the entry of the plea by the defendant to the charge(s) in this case.

Date

3/31/08

Name Of Prosecutor (Type Or Print)

Paul E. Brown

Signature Of Prosecutor

[Signature]

PLEA ADJUDICATION

Upon consideration of the record proper, evidence or factual presentation offered, answers of defendant, and statements of the lawyer for the defendant and the prosecutor, the undersigned finds that:

1. There is a factual basis for the entry of the plea (and for the admission as to aggravating factors and/or sentencing points);
2. The defendant is satisfied with his/her lawyer's legal services;
3. The defendant is competent to stand trial;
4. ☐ The State has provided the defendant with appropriate notice as to the aggravating factors and/or points. ☐ The defendant has waived notice as to the aggravating factors and/or points; and
5. The plea (and admission) is the informed choice of the defendant and is made freely, voluntarily and understandingly.

The defendant's plea (and admission) is hereby accepted by the Court and is ordered recorded.

Date

4/7/08

Name Of Presiding Judge (Type Or Print)

John L. Folschauer, Jr.

Signature Of Presiding Judge

[Signature]

STATE VERSUS

File No.

08 CAS 177

Name Of Defendant

Thomas Lynn Nesbit

15. (if applicable) The prosecutor, your lawyer, and you have informed me that the following contains all the terms and conditions of your plea:

Defendant to plead to Class (H)

Felony: Obtaining Property By False Pretenses

Defendant to receive probationary sentence

Terms to be set by the Court

Prosecutor's Initials:

Defense Counsel's Initials:

Defendant's Initials:

PLEAS

✓	Plea*	File Number	Count No(s)	Offense(s)	Date Of Offense	G.S. No.	F/H	CL	†Pun. CL	Maximum Punishment
✓	G	08-177	1	OBTAINING PROPERTY BY FALSE PRETENSES	11/10/05	14-100	F	H		30 mos

✓ = Guilty
NC = No Contact

TOTAL MAXIMUM PUNISHMENT

30 mos

MANDATORY MINIMUM FINES & SENTENCES (if any)

✓ NOTE TO CLERK: If this column is checked this is an added offense or reduced charge.

† NOTE: Enter punishment class if different from underlying felony class (punishment class represents a status or enhancement).

PLEAS (continued from Side One)									
✓	Plea?	File Number	Count No.(s)	Offense(s)	Date Of Offense	G.S. No.	F/M	CL	Maximum Punishment

SUPERIOR COURT DISMISSALS PURSUANT TO PLEA ARRANGEMENT

File No.	Count No.(s)	Offense(s)

DISTRICT COURT DISMISSALS PURSUANT TO PLEA ARRANGEMENT

File No.	Count No.(s)	Offense(s)

CERTIFICATION BY PROSECUTOR

The undersigned prosecutor enters a dismissal to the above charges pursuant to a plea arrangement shown on this Transcript Of Plea.

Date	Name Of Prosecutor (Type Or Print)	Signature Of Prosecutor